

## ***Occupational Disease Evaluations***

The Workers' Compensation Claims Assistance Unit of the Employment Relations Division (ERD) is responsible for the occupational disease (OD) evaluation process. The process is used to determine whether a claimant's condition is a result of the employment and to determine compensability of claims under the OD statutes when an insurer has not accepted liability for the claim.

The process requires the claimant to attend a medical evaluation directed by the Department. The medical evaluator submits a report of findings to the Department. A copy of the report is then sent to the claimant and the insurer for determination.

Disputes that are not resolved through mediation are subject to the jurisdiction of the Workers' Compensation Court.

Effective April 23, 1999, a legislative change altered the process. OD claims with dates of injury prior to April 23, 1999 can elect to remain in the previous OD panel process.

**§ 39-72-602. ...applies retroactively** to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. The law eliminated the three-step procedure and replaced it with one independent examination and a report from the evaluator. If a dispute exists regarding the compensability of an occupational disease claim, the jurisdiction is transferred from the Department's Contested Case Hearing process to mediation and then to the Workers' Compensation Court.

As a result of these changes, the presentation of OD case data changed beginning with fiscal year 2000.

**Occupational Disease Cases Processed  
By Plan Type<sup>1</sup> and Fiscal Year**

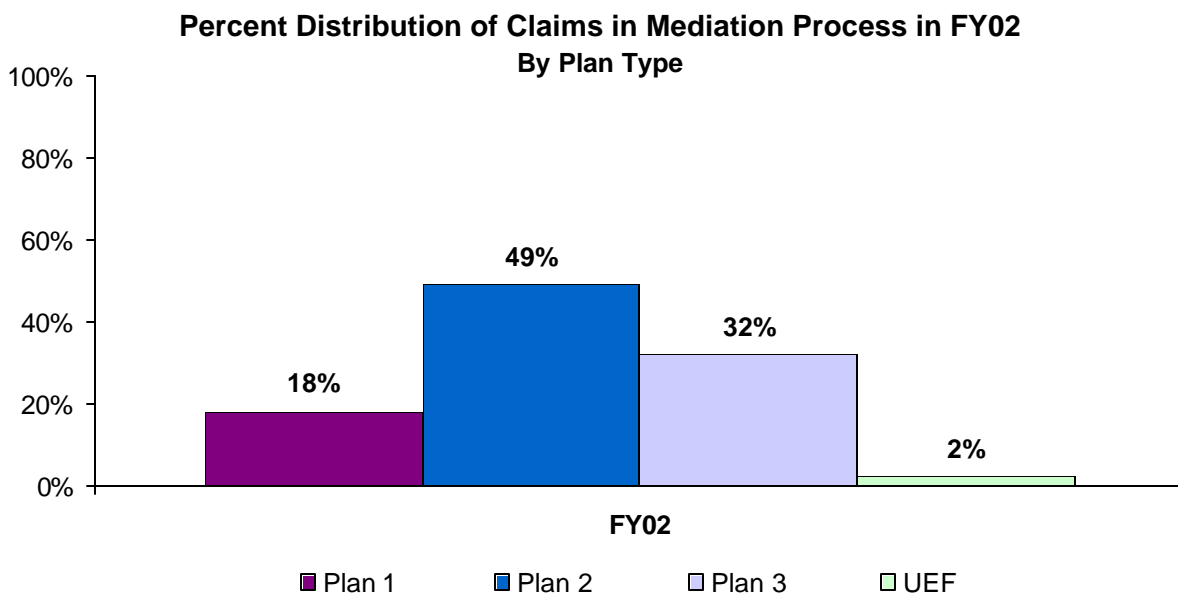
<b>Plan Type</b>	<b>FY00</b>	<b>FY01</b>	<b>FY02</b>
<b>Plan 1</b>	47	40	29
<b>Plan 2</b>	87	82	63
<b>Plan 3</b>	58	45	81
<b>Total</b>	<b>192</b>	<b>167</b>	<b>173</b>

**Notes:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, and Plan 3 – State Fund

## Mediation

The Workers' Compensation Mediation Unit of the Employment Relations Division provides a mandatory process for resolving disputes dealing with benefits for both occupational injury and occupational disease claims. The mediation process is confidential, non-binding, and informal. The mediator facilitates the exchange of information between the parties and assists with solutions aimed at resolving the dispute. Conferences are held either in person in Helena or by telephone conference. Often, more than one conference is held in order to resolve the disputes on a claim. In Fiscal Year 2002, the Mediation Unit received and processed 1,260 petitions, which involved 1,396 claims. A petition is a request for mediation. A petition may include multiple claims.



**Percent Distribution of Claims in Mediation Process  
By Plan Type<sup>1</sup> and Fiscal Year<sup>2</sup>**

Plan Type	FY98	FY99	FY00	FY01	FY02
Plan 1	16%	16%	15%	17%	18%
Plan 2	35%	39%	46%	49%	49%
Plan 3	46%	43%	36%	32%	32%
UEF	3%	2%	2%	2%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Total Count<sup>3</sup></b>	<b>857</b>	<b>913</b>	<b>1,187</b>	<b>1,301</b>	<b>1,396</b>

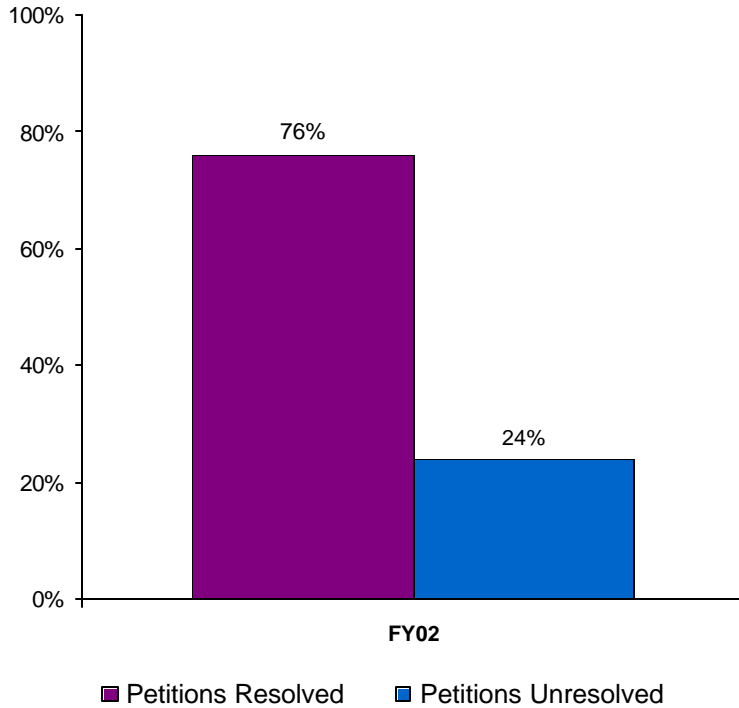
**Notes:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – State Fund, and UEF – Uninsured Employers Fund

<sup>2</sup>Prior to fiscal year 1999 we were unable to track multiple plan numbers or claims; therefore total counts for these years are incomplete.

<sup>3</sup>Total Count represents number of claims, not number of petitions.

**Percent Distribution of Petitions Resolved  
in FY02**



- Over the past five years Mediation has had an average resolution rate of 80%.
- In FY02 the average completion time for a mediation, from date of petition received to the issuing of a written recommendation, was 34 days.

**Distribution of Petitions<sup>1</sup> Received  
By Fiscal Year**

Petitions Received	FY98		FY99		FY00		FY01		FY02	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Pending <sup>2</sup>	0	0%	2	1%	5	1%	4	1%	123	10%
Closed	913	100%	1,089	99%	1,163	99%	1,191	99%	1,137	90%
<b>Total Petitions Received</b>	<b>913</b>	<b>100%</b>	<b>1,091</b>	<b>100%</b>	<b>1,168</b>	<b>100%</b>	<b>1,195</b>	<b>100%</b>	<b>1,260</b>	<b>100%</b>
Resolved	720	79%	901	83%	942	81%	960	81%	869	76%
Unresolved	193	21%	188	17%	221	19%	231	19%	268	24%
<b>Total Petitions Closed</b>	<b>913</b>	<b>100%</b>	<b>1,089</b>	<b>100%</b>	<b>1,160</b>	<b>100%</b>	<b>1,191</b>	<b>100%</b>	<b>1,137</b>	<b>100%</b>

**Notes:**

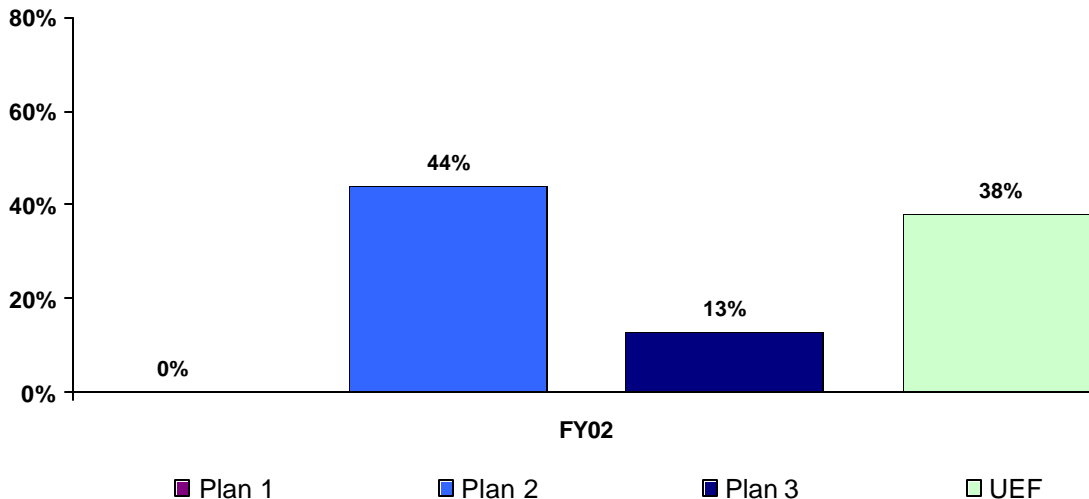
<sup>1</sup>A single petition may include multiple claims and/or multiple insurers.

<sup>2</sup>Eventual outcome of pending petitions will affect percent resolved.

## Contested Case Hearings

The Department of Labor and Industry's Hearings Bureau holds contested case hearings. Disputes heard at contested case hearings include appeals from orders and determinations issued by ERD, assessments of penalties for uninsured employers, medical disputes between providers and insurers when payments to the claimant are not an issue, and regulation of attorney fees. The numbers of cases being heard by the Hearings Bureau has been declining since Fiscal Year 1998, when the Legislature transferred responsibility for hearing occupational disease claims to the Workers' Compensation Court. For fiscal year 2002 the Hearings Bureau received 16 new requests for contested case hearings.

**Percent Distribution of Petitions Received in FY02  
By Plan Type**



**Distribution of Petitions Received  
By Plan Type<sup>1</sup> and Fiscal Year**

Plan Types	FY98		FY99		FY00		FY01		FY02	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Plan 1	12	11%	16	23%	5	16%	0	0%	0	0%
Plan 2	43	38%	21	30%	14	45%	12	63%	7	44%
Plan 3	33	29%	14	20%	6	19%	1	5%	2	13%
UEF	26	23%	18	26%	6	19%	6	32%	6	38%
PEO	NA	NA	NA	NA	NA	NA	NA	NA	1	6%
<b>Total<sup>2</sup></b>	<b>114</b>	<b>100%</b>	<b>69</b>	<b>100%</b>	<b>31</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>16</b>	<b>100%</b>

**Notes:**

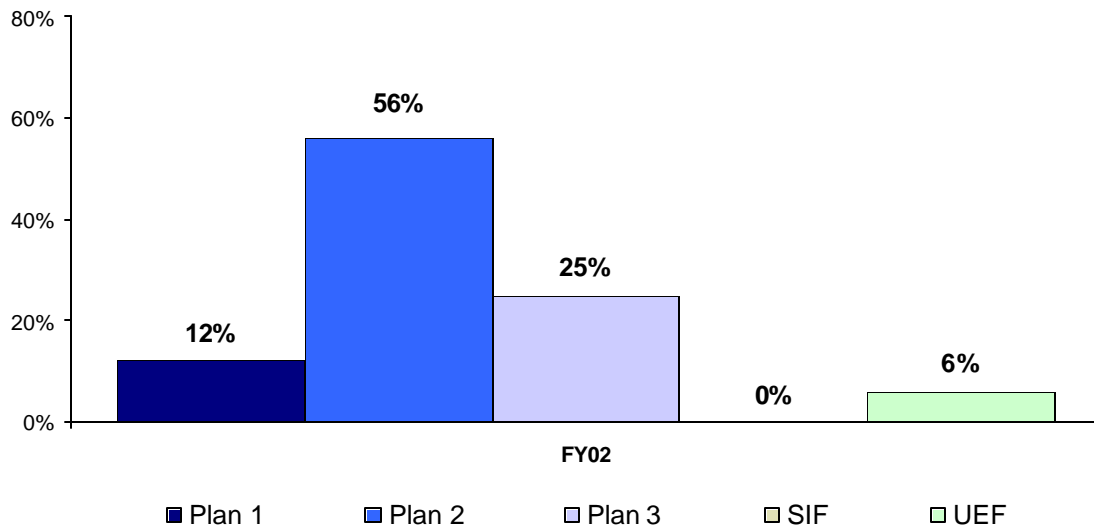
<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – State Fund, UEF - Uninsured Employers Fund, and PEO – Professional Employer Organization.

<sup>2</sup>Columns may not sum 100% due to rounding.

## Workers' Compensation Court

The Workers' Compensation Court resolves disputes between insurers/employers and injured workers, and for workers disabled as a result of an occupational disease. The Court has original jurisdiction over benefit issues arising under the Workers' Compensation Act and the Occupational Disease Act. For an injury occurring after July 1, 1987, the controversy must first be mediated. The Court's exclusive jurisdiction also extends to disputes involving independent contractor exemptions under both the Workers' Compensation and Unemployment Insurance Acts, enforcement of the Department of Labor and Industry's (DLI) subpoenas, civil penalties for violations of workers' compensation provisions, and the two-year return to work preference specified in section 39-71-317(2), MCA.

**Percent Distribution of Petitions Received in FY02  
By Plan Type<sup>1</sup>**



**Distribution of Petitions Received  
By Plan Type and Fiscal Year**

	FY98		FY99		FY00		FY01		FY02	
Plan Type	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Plan 1	18	7%	18	7%	23	9%	14	6%	29	12%
Plan 2	98	40%	136	50%	118	45%	144	60%	140	56%
Plan 3	116	47%	95	35%	86	33%	65	27%	62	25%
SIF	1	0%	0	-	0	-	1	0%	1	0%
UEF	13	5%	21	8%	34	13%	15	6%	16	6%
Total by Plan <sup>2</sup>	246	100%	270	100%	261	100%	239	100%	248	100%
Total Cases	235	100%	266	100%	255	100%	228	100%	243	100%

**Notes:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers Group, Plan 2 – Private Insurance, Plan 3 – State Fund, SIF – Subsequent Injury Fund, and UEF – Uninsured Employers Fund

<sup>2</sup>Petitions involving more than one plan account for the higher totals.

**Distribution of Decisions By The  
Workers' Compensation Court  
By Fiscal Year**

<b>Decisions</b>	<b>FY98</b>	<b>FY99</b>	<b>FY00</b>	<b>FY01</b>	<b>FY02</b>
Telephone Conference Resulting in Disposition	6	-	-	-	3
Bench Rulings w/out written decisions	2	3	1	3	2
<b>Decisions</b>	<b>45</b>	<b>61</b>	<b>66</b>	<b>90</b>	<b>103</b>
Orders on Appeal	9	4	8	0	4
Substantive Orders	52	22	36	64	26
Attorney Fee Orders	3	2	1	7	0
Orders on Cost	8	13	5	4	14
Disposed of by Telephonic Conference	6	-	-	-	2
<b>Subtotals</b>	<b>125</b>	<b>108</b>	<b>117</b>	<b>167</b>	<b>152</b>
Petitions Dismissed by Agreement	155	157	175	136	118
<b>Totals</b>	<b>280</b>	<b>265</b>	<b>292</b>	<b>303</b>	<b>270</b>

**Full & Final Compromise Settlements By The  
Workers' Compensation Court  
By Plan Type and Fiscal Year**

<b>Plan Type</b>	<b>FY98</b>	<b>FY99</b>	<b>FY00</b>	<b>FY01</b>	<b>FY02</b>
Plan 1 Self-Insured	16	12	11	5	5
Plan 2 Private Insurers	27	27	18	23	16
Plan 3 State Compensation Ins. Fund	54	56	47	41	24
Plan 4 Subsequent Injury Fund	0	0	0	0	0
Plan 5 Uninsured Employers Fund	0	0	0	0	0
<b>Total</b>	<b>97</b>	<b>95</b>	<b>76</b>	<b>69</b>	<b>45</b>

**Note:**

<sup>1</sup>Plan types: Plan 1 – Self-insured Employers, Plan 2 – Private Insurance, Plan 3 – State Fund, SIF – Subsequent Injury Fund, and UEF - Uninsured Employers Fund